

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

APRIL Y.,

Plaintiff,

v.

ANDREW M. SAUL,
Commissioner of Social Security,

Defendant.

CASE NO. C19-1941-MAT

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is AFFIRMED.

FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1981.¹ She has a high school diploma and previously worked as a receptionist. (AR 250.)

¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 Plaintiff applied for SSI and Disability Insurance Benefits (DIB) in November 2016,
2 alleging disability as of June 1, 2001.² (AR 222-30.) Those applications were denied and Plaintiff
3 timely requested a hearing. (AR 137-45, 147-53, 158-63, 165-66.)

4 On May 31, 2018, ALJ Larry Kennedy held a hearing, taking testimony from Plaintiff and
5 a vocational expert (VE). (AR 43-77.) On September 25, 2018, the ALJ issued a decision finding
6 Plaintiff not disabled. (AR 22-37.) Plaintiff timely appealed. The Appeals Council denied
7 Plaintiff's request for review on September 25, 2019 (AR 1-7), making the ALJ's decision the
8 final decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to
9 this Court.

10 **JURISDICTION**

11 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

12 **DISCUSSION**

13 The Commissioner follows a five-step sequential evaluation process for determining
14 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must
15 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not
16 engaged in substantial gainful activity since the application date. (AR 26.) At step two, it must
17 be determined whether a claimant suffers from a severe impairment. The ALJ found severe
18 Plaintiff's bipolar disorder, anxiety disorder, and post-traumatic stress disorder. (AR 26-29.) Step
19 three asks whether a claimant's impairments meet or equal a listed impairment. The ALJ found
20 that Plaintiff's impairments did not meet or equal the criteria of a listed impairment. (AR 29-31.)

21 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess

22 ² At the administrative hearing, Plaintiff amended her alleged onset date to November 17, 2016,
23 and withdrew her application for DIB. (AR 51-52.)

1 residual functional capacity (RFC) and determine at step four whether the claimant has
2 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
3 performing a full range of work at all exertional levels, with the following nonexertional
4 limitations: she must avoid concentrated exposure to pulmonary irritants. She can perform simple,
5 routine tasks and follow short, simple instructions. She can do work that requires little or no
6 judgment and can perform simple duties that can be learned on the job in a short period. She can
7 work in proximity to co-workers, but not in a cooperative or team effort. She requires a work
8 environment that has no more than superficial interactions with co-workers. She requires a work
9 environment that is predictable and with few work setting changes. She requires a work
10 environment without public contact. (AR 31.)

11 The ALJ found that Plaintiff has no past relevant work (AR 35), and thus moved on to step
12 five, where the burden shifts to the Commissioner to demonstrate that the claimant retains the
13 capacity to make an adjustment to work that exists in significant levels in the national economy.
14 With the assistance of the VE, the ALJ found Plaintiff capable of transitioning to other
15 representative occupations, such as janitor, laundry worker II, small products assembler, and
16 electrical accessories assembler. (AR 35-36.)

17 This Court's review of the ALJ's decision is limited to whether the decision is in
18 accordance with the law and the findings supported by substantial evidence in the record as a
19 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more
20 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
21 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750
22 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's
23 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.

1 2002).

2 Plaintiff argues the ALJ erred in (1) finding her physical impairments not severe at step
3 two and/or not accounting for any physical limitations in the RFC assessment, (2) failing to fully
4 account for her obesity, (3) discounting her subjective symptom testimony, and (4) assessing
5 certain medical opinions. The Commissioner argues that the ALJ's decision is supported by
6 substantial evidence and should be affirmed.

7 Step two

8 At step two, a claimant must make a threshold showing that her medically determinable
9 impairments significantly limit her ability to perform basic work activities. *See Bowen v. Yuckert*,
10 482 U.S. 137, 145 (1987); 20 C.F.R. §§ 404.1520(c), 416.920(c). "Basic work activities" refers
11 to "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§ 404.1522(b), 416.922(b).
12 "An impairment or combination of impairments can be found 'not severe' only if the evidence
13 establishes a slight abnormality that has 'no more than a minimal effect on an individual's ability
14 to work.'" *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (quoting Social Security Ruling
15 (SSR) 85-28). "[T]he step two inquiry is a de minimis screening device to dispose of groundless
16 claims." *Id.* (citing *Bowen*, 482 U.S. at 153-54). An ALJ is also required to consider the
17 "combined effect" of an individual's impairments in considering severity. *Id.* A diagnosis alone
18 is not sufficient to establish a severe impairment. Instead, a claimant must show his medically
19 determinable impairments are severe. 20 C.F.R. §§ 404.1521, 416.921.

20 Plaintiff assigns error to multiple aspects of the ALJ's step-two findings regarding physical
21 conditions. First, Plaintiff argues that the ALJ erred in considering Plaintiff's physical conditions
22 separately rather than in combination, to determine whether her conditions caused significant
23 workplace limitations. Dkt. 10 at 4-5. Plaintiff contends that if the ALJ had considered her

1 conditions in combination, “he would have had to have found that Plaintiff was not able to perform
2 work at all exertional levels.” Dkt. 10 at 5. Plaintiff does not explain why the ALJ’s RFC
3 assessment would have been different, however, and does not cite any evidence indicating that her
4 conditions considered in combination led to symptoms that were ignored by the ALJ. Plaintiff’s
5 conclusory argument fails to establish harmful legal error in the ALJ’s condition-by-condition
6 discussion at step two.

7 Second, Plaintiff argues the ALJ erred in finding Plaintiff’s chronic pain syndrome to be
8 not medically determinable. The ALJ acknowledged that the record contained references to a
9 chronic pain diagnosis, but the ALJ found that these treatment notes failed to establish evidence
10 of the relevant diagnostic criteria for this condition. (AR 28.) The ALJ also indicated that he
11 considered Plaintiff’s allegations of chronic pain in connection with her severe mental
12 impairments. (*Id.*) Indeed, Plaintiff references many mental symptoms (*e.g.* problems sleeping,
13 fatigue, mood swings, anxiety, panic attacks, agoraphobia, difficulty completing tasks and
14 interacting with others) that she links to her chronic pain (Dkt. 10 at 5), and the ALJ discussed
15 those allegations in the decision. (AR 31-33.) Plaintiff has not pointed to medical evidence
16 referencing chronic pain symptoms not discussed by the ALJ, and Plaintiff did not allege any
17 physical limitations in her agency paperwork. (AR 245.) Given that Plaintiff has not shown that
18 the ALJ erred in finding that her chronic pain diagnoses did not satisfy the diagnostic criteria, nor
19 shown that including chronic pain syndrome at step two would have led to the inclusion of other
20 RFC limitations even if it had been found to be medically determinable, Plaintiff has failed to
21 establish harmful legal error in the ALJ’s assessment of chronic pain syndrome.

22 Third, Plaintiff argues that the ALJ erred in failing to discuss her diagnosed myofascial
23 pain. Dkt. 10 at 6. Plaintiff points to multiple instances of references to myofascial pain in the

1 record. *Id.* (citing, *e.g.*, AR 400, 402, 420, 424, 739, 752). In each of those illustrative citations,
2 myofascial pain is listed in a long list of conditions, without any accompanying discussion of
3 symptoms, limitations, or treatment. (AR 400, 402, 420, 424, 739, 752.) Inclusion of myofascial
4 pain in a list of diagnoses is not sufficient to demonstrate that a condition is either medically
5 determinable or severe, and Plaintiff has not identified any evidence showing that her myofascial
6 pain caused any particular limitations. For these reasons, Plaintiff has failed to meet her burden
7 to show harmful legal error stemming from the ALJ's failure to discuss Plaintiff's myofascial pain.

8 Lastly, Plaintiff alleges that the ALJ erred in assessing her obesity. The ALJ discussed
9 Plaintiff's obesity at step two, finding it to be not severe. (AR 27.) Plaintiff argues that the ALJ's
10 findings fail to comply with agency guidance because the ALJ failed to discuss the impact of
11 Plaintiff's obesity on her ability to sustain physical activity over time or on her mental
12 impairments. Dkt. 10 at 8. But Plaintiff cites no evidence that her obesity impacted her ability to
13 sustain physical activity or impacted her mental impairments. Dkt. 10 at 8-9. Plaintiff points to
14 an examining psychologist's opinions as evidence that she would have various marked limitations
15 (Dkt. 10 at 8-9 (citing AR 390, 941)), but those opinions do not mention obesity. (AR 388-96,
16 940-45.) Accordingly, Plaintiff has failed to show that the ALJ's findings regarding her obesity
17 were erroneous.

18 Because Plaintiff has failed to show that the challenged step-two findings were erroneous
19 and/or resulted in any harm in the ALJ's decision, the Court affirms the ALJ's step-two findings.

20 Subjective symptom testimony

21 The ALJ discounted Plaintiff's subjective symptoms, finding her allegations to be
22 inconsistent with (1) the many normal objective findings in the record, (2) her own reports to
23 providers that she was "doing OK", and (3) her activities. (AR 31-33.) The ALJ also found that

1 Plaintiff's poor work history suggests that her current lack of employment is based on factors other
2 than medical impairments. (AR 33.) Plaintiff argues that this reasoning is not clear and
3 convincing, as required in the Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir.
4 2014).

5 With respect to the normal objective findings, Plaintiff argues that the ALJ failed to explain
6 how these findings contradict her allegations. Dkt. 10 at 15. This argument is not persuasive: the
7 ALJ contrasted the evidence of her "benign presentation" during appointments with Plaintiff's
8 allegations of "chronic, incapacitating depression and bipolar disorder[.]" (AR 33.) Although
9 this reasoning may not solely support the ALJ's discounting of Plaintiff's allegations, the ALJ did
10 not err in considering the degree to which Plaintiff's allegations were corroborated by the objective
11 record. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) ("While subjective pain
12 testimony cannot be rejected on the sole ground that it is not fully corroborated by objective
13 medical evidence, the medical evidence is still a relevant factor in determining the severity of the
14 claimant's pain and its disabling effects.").

15 Next, the ALJ noted that Plaintiff reported to her providers on more than one occasion that
16 she was doing "OK" and that her symptoms improved with medication. (AR 33 (citing AR 912,
17 916, 920).) The ALJ did not err in considering the extent that Plaintiff's reports to providers
18 matched her disability allegations. *See, e.g., Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006)
19 (ALJ may consider a claimant's inconsistent or non-existent reporting of symptoms).

20 The ALJ went on to find Plaintiff's activities to be inconsistent with her allegations. (AR
21 33.) The ALJ cited, for example, Plaintiff's ability to care for her three children and manage their
22 schedules, complete household chores, leave her home daily, and manage her finances as evidence
23 that undermines Plaintiff's allegations. (AR 33.) Plaintiff contends that these activities do not

1 contradict her allegations or demonstrate the existence of transferable work skills, and therefore
2 do not support the ALJ's discounting of her allegations. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th
3 Cir. 2007) (activities may undermine credibility where they (1) contradict the claimant's testimony
4 or (2) "meet the threshold for transferable work skills"). The ALJ's decision highlights, however,
5 allegations that are inconsistent with the cited activities: the ALJ noted Plaintiff's alleged fatigue,
6 difficulty leaving the house, and concentration deficits (AR 31), and these allegations are
7 reasonably inconsistent with evidence showing Plaintiff was capable of managing her household
8 with three children, including getting them ready for school and transporting them to school or the
9 bus stop; preparing full meals daily; washing laundry and dishes, and vacuuming; attending her
10 children's field trips and watching her children's sporting events; managing her own personal care
11 and medication without reminders; leaving her home on a daily basis; and managing her own
12 finances. (AR 33.) The ALJ did not err in finding that at least some of Plaintiff's activities are
13 inconsistent with her allegation of disabling mental limitations.

14 Lastly, the ALJ found that the record suggested that Plaintiff was not working for reasons
15 other than her impairments, which undermines her disability claim. *See SSR 82-61*, 1982 WL
16 31387, at *1 (Jan. 1, 1982) ("A basic program principle is that a claimant's impairment must be
17 the primary reason for his or her inability to engage in substantial gainful work."). The ALJ
18 detailed Plaintiff's scant work history, even during the many years before she alleges she became
19 disabled, which led the ALJ to conclude that Plaintiff's "current lack of employment is related to
20 other factors than medical impairments." (AR 33.) Plaintiff suggests that this finding is not
21 supported by substantial evidence, because the ALJ cited only one record as suggesting that
22 Plaintiff quit a telemarketing job because she did not like it. (*See* AR 33 (citing 940).) But other
23 evidence in the record also supports the ALJ's conclusion that Plaintiff's unemployment was not

1 due to her impairments. (*See, e.g.*, AR 313 (“[Plaintiff] [g]raduated high school, started college,
2 got pregnant, and now stays home and cares for children”), 324 (“employed until pregnancy”).)
3 Plaintiff has not shown that the ALJ selectively cited evidence out of context, and does not point
4 to evidence showing that her work history was more robust than the ALJ found. Thus, Plaintiff
5 has failed to establish error in this line of the ALJ’s reasoning. *See Thomas*, 278 F.3d at 959 (ALJ
6 properly considered “‘extremely poor work history’” and showing of “‘little propensity to work in
7 [claimant’s] lifetime’” as negatively affecting her credibility as to inability to work; noting
8 claimant’s “work history was spotty, at best, with years of unemployment between jobs, even
9 before she claimed disability”).

10 Because the ALJ provided multiple clear and convincing reasons to discount Plaintiff’s
11 allegations, the Court affirms this part of the ALJ’s decision.

12 Medical opinion evidence

13 Psychologist David Mashburn, Ph.D., examined Plaintiff twice, in September 2016 and
14 May 2018, and completed DSHS form opinions after each examination. (AR 388-96, 940-45.)
15 Plaintiff’s mental health clinician Brendon Mendoza also completed a form opinion describing
16 Plaintiff’s ability to work in May 2016. (AR 930-32.) The ALJ discounted all of these opinions
17 (AR 34-35), and Plaintiff contends that the ALJ’s reasons for doing so are not legally sufficient.

18 In general, more weight should be given to the opinion of a treating doctor than to a non-
19 treating doctor, and more weight to the opinion of an examining doctor than to a non-examining
20 doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).³ Where not contradicted by another
21 doctor, a treating or examining doctor’s opinion may be rejected only for “‘clear and convincing’”

22 _____
23 ³ Because Plaintiff filed disability applications prior to March 27, 2017, the regulations set forth in
20 C.F.R. § 404.1527 and § 416.927 apply to the ALJ’s consideration of medical opinions.

1 reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where contradicted,
2 a treating or examining doctor's opinion may not be rejected without "specific and legitimate
3 reasons' supported by substantial evidence in the record for so doing." *Id.* at 830-31 (quoting
4 *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

5 Lay witness testimony as to a claimant's symptoms or how an impairment affects ability
6 to work is competent evidence and cannot be disregarded without comment. *Van Nguyen v.*
7 *Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ can reject the testimony of lay witnesses
8 only upon giving germane reasons. *Smolen v. Chater*, 80 F.3d 1273, 1288-89 (9th Cir. 1996).

9 Dr. Mashburn

10 The ALJ summarized Dr. Mashburn's opinions and explained that he gave them slight
11 weight because (1) Dr. Mashburn did not review Plaintiff's longitudinal records, (2) his checkbox
12 opinions regarding Plaintiff's limitations were unexplained and inconsistent with mental status
13 examinations, (3) his opinions were rendered for the purpose of qualifying Plaintiff for state
14 benefits rather than assessing her RFC, and (4) he did not explain why Plaintiff's deficits increased
15 between 2016 and 2018. (AR 34-35.)

16 Plaintiff argues that the ALJ erred in discounting Dr. Mashburn's opinions based on his
17 lack of access to the longitudinal record because the ALJ did not point to any evidence in the
18 longitudinal record that contradicts Dr. Mashburn's opinions. Dkt. 10 at 10. But this argument
19 misconstrues the ALJ's point: the ALJ found that Dr. Mashburn's opinions were undermined by
20 his lack of familiarity with Plaintiff's case record. (AR 34-35 & n.3.) This is a valid reason to
21 discount Dr. Mashburn's opinions. *See, e.g.*, 20 C.F.R. § 416.927(c)(6). To the extent that the
22 ALJ also suggested that Dr. Mashburn's 2018 opinion was inconsistent with Plaintiff's
23 psychotherapy record (AR 35), the ALJ cited notes that are indeed reasonably inconsistent with

1 Dr. Mashburn's opinion. (*See, e.g.*, AR 32 (summarizing many normal objective mental findings),
2 33 (referencing notes suggesting improvement with medication and Plaintiff's reports of doing
3 OK).) The ALJ did not err in discounting Dr. Mashburn's opinion on this basis as well. *See, e.g.*,
4 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (not improper to reject an opinion
5 presenting inconsistencies between the opinion and the medical record).

6 Plaintiff goes on to argue that the ALJ erred in finding Dr. Mashburn's conclusions to be
7 inconsistent with his largely normal mental status examinations, because such a finding is
8 conclusory. Dkt. 10 at 11. Plaintiff is mistaken: the ALJ explicitly contrasted the checkbox
9 limitations with the mental status examination findings, which are indeed reasonably inconsistent.
10 (AR 34-35.) This is a valid reason to discount Dr. Mashburn's opinions. The ALJ also reasoned
11 (AR 35) that Dr. Mashburn failed to explain why Plaintiff's deficits increased between 2016 and
12 2018, even though her mental status examinations were nearly identical on both occasions.
13 (*Compare* AR 389-92 *with* AR 941-43.) This is another internal inconsistency that the ALJ
14 properly considered when weighing Dr. Mashburn's opinions. *See Morgan v. Comm'r of Social*
15 *Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999) (ALJ appropriately considers internal
16 inconsistencies within and between physicians' reports).

17 Lastly, Plaintiff argues that the ALJ erred in discounting Dr. Mashburn's opinions because
18 they were provided for the purpose of determining eligibility for state benefits rather than
19 describing her RFC. Dkt. 10 at 11. The Commissioner does not defend this line of reasoning.
20 Dkt. 14 at 11. To the extent that this reasoning is erroneous, the error is harmless in light of the
21 ALJ's other valid reasons to discount Dr. Mashburn's opinions. *See Carmickle v. Comm'r of*
22 *Social Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).

23 Because the ALJ provided several legally sufficient reasons to discount Dr. Mashburn's

1 opinions, the Court affirms the ALJ's assessment of these opinions.

2 Mr. Mendoza

3 The ALJ did not assign any particular weight to Mr. Mendoza's opinion, but noted that it
4 was written "half a year" before the adjudicated period began, and found that during the
5 adjudicated period Plaintiff's symptoms improved with treatment after she separated from her ex-
6 boyfriend. (AR 35 (citing AR 703, 912, 916).)

7 Plaintiff argues that the ALJ erred in discounting Mr. Mendoza's opinion based on timing
8 because Plaintiff had alleged that her disability began in 2001, many years before Mr. Mendoza's
9 2016 opinion was completed. Dkt. 10 at 12. But at the administrative hearing, as noted *supra*,
10 Plaintiff amended her alleged onset date to her application date, November 17, 2016, and thus
11 Plaintiff has not shown that the ALJ erred in finding that Mr. Mendoza's opinion predated the
12 adjudicated period. *See Carmickle*, 533 F.3d at 1165 ("Medical opinions that predate the alleged
13 onset of disability are of limited relevance.").

14 Furthermore, the ALJ cited evidence dating to the adjudicated period that contradicts Mr.
15 Mendoza's opinion, which suggested that Plaintiff was not experiencing any relief from her
16 symptoms. (AR 931.) Plaintiff argues that even if her symptoms improved during the adjudicated
17 period, some symptoms persisted. Dkt. 10 at 13. The ALJ's decision does not find that all of
18 Plaintiff's symptoms were eliminated, however: the ALJ's RFC assessment includes significant
19 mental limitations. (AR 31.) The ALJ cited evidence of some improvement in records post-dating
20 Mr. Mendoza's opinion, which supported the ALJ's assessment of Mr. Mendoza's opinion. Thus,
21 Plaintiff has not shown that the ALJ erred in discounting Mr. Mendoza's opinion based on its
22 inconsistency with the record during the adjudicated period. *See Thomas*, 278 F.3d at 957 (ALJ
23 may consider improvement with treatment in discounting physician's opinion); *Lewis v. Apfel*, 236

1 F.3d 503, 511 (9th Cir. 2001) (“One reason for which an ALJ may discount lay testimony is that
2 it conflicts with medical evidence.”). Accordingly, the Court affirms the ALJ’s assessment of Mr.
3 Mendoza’s opinion.

4 **CONCLUSION**

5 For the reasons set forth above, this matter is AFFIRMED.

6 DATED this 23rd day of September, 2020.

7
8 

9 Mary Alice Theiler
United States Magistrate Judge